

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3320 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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MUKESH KANTILAL JOGIYA

Versus

STATE OF GUJARAT

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Appearance:

MR AJ SHASTRI for Petitioners

MR BY MANKAD, APP for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 29/09/1999

ORAL JUDGEMENT

Rule. Mr. B.Y. Mankad, learned APP appears and waives service of Rule for respondent no.1 State and learned counsel Mr. Yogesh Lakhani appears and waives service of Rule for respondent no.2- original complainant.

Respondent no.2 Induben Bhikhubhai Raninga lodged

a private complaint against the petitioners accused being Criminal Case No. 23/99 filed in the Court of the learned Judicial Magistrate, First Class, Porbandar. Original complaint was sent for investigation by the learned Judicial Magistrate, First Class, Porbandar under sec. 156(3) of the Cr.P.Code to the police which came to be lodged FIR being M. Case No.1/99 registered with Bagvadar Police Station, District : Porbandar, for the offence punishable under sec. 406, 114 of I.P.Code.

Mr. A.T. Shahtri, learned counsel appearing for the petitioners submits that copy of the complaint registered with the police and the copy of the private complaint lodged before the learned JMFC, Porbandar on 30.4.1999 vis-a-vis the order passed by the learned Magistrate on the very same day, indicates that the complaint is filed beyond the prescribed period of limitation considering the provisions of Sec. 468 of the Cr.P. Code. According to Mr. Shahstri, maximum period of punishment prescribed for the offence under sec.406 of I.P.Code is 3 years or with fine or both and so, the complainant ought to have filed the complaint, even if accused or any of them have committed such offence, within three years. Mr. Shahtri has taken me through entire complaint and stated that alleged offence was committed on or before 9.6.1995. The date of the complaint is 30.4.1999. So, the same is beyond the period of limitation. Mr. Shashtri has rightly argued that before passing the order for investigation under sec. 156(3) of the Cr.P.Code in respect of the complaint concerned, the learned Magistrate ought to have applied his mind and such order cannot be passed mechanically. Such order, if passed, is bad in law. Mr. Shashtri has placed reliance on the decision of the Apex Court in the case of State of Punjab v/s Sarwan Singh, reported in AIR 1981 SC 1054 and two other decisions in support of his submissions. However, I do not see any need to quote the observations made therein because the provisions of sec. 468 of Cr.P.Code, Sec.406 of I.P.Code and contents of the complaint filed by the original complainant Induben, if considered simultaneously, it can be legitimately inferred that the petitioner accused should not be compelled to under go stress of police investigation or to face formal trial. The complaint is clearly beyond the period of limitation. It would be doubtful whether the Magistrate, even if police files adverse report against the accused that accused has committed an offence, can take cognizance of the offence against the petitioner for the offence under sec. 406 of I.P.Code in view of the provisions of sec. 468 of Cr.P.Code as well as in view of settled legal position referred to above. I am in agreement with the submission made by the learned

counsel Mr. Shashtri appearing for the petitioners that the criminal proceedings initiated by the complainant would not lead to any fair trial.

On the other hand, Mr. Lakhani, learned counsel appearing for respondent no.2- original complainant has submitted that looking the facts and circumstances of the case and as the complainant was eager to compound the offence, the Court should not take any technical view of the matter and complaint should not be thrown on such technical point of limitation. Though other contentions are raised by learned counsel Mr. Lakhani, the same being not convincing or having legal force, are not accepted.

In the result, Misc Criminal Application is allowed. Proceedings pending before the learned Judicial Magistrate, First Class, Porbandar being Criminal Case No. 23/99 registered on the complaint lodged before the Bagvadar Police Station being M.Case No. 1/99 against the petitioners for the offence punishable under sec. 406 read with sec.114 of the I.P.Code are hereby quashed and set aside. Petitioners accused are on bail, their bail bonds stand cancelled.

Rule is made absolute.

29.09.1999 [ C.K. BUCH, J]

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